SAN FRANCISCO PUBLIC LIBRARY
3 1223 06648 1830

MEMORANDUM OF UNDERSTANDING

Between and For

THE CITY AND COUNTY OF SAN FRANCISCO

and

OPERATING ENGINEERS, LOCAL #3

For Fiscal Year 1978-79

SEP 07 1978
DOCUMENTS

TABLE OF CONTENTS

SECTION	PAGE NUMBER
1 - Recognition	1
2 - Intent	1
3 - No Strike Provision	2
4 - Objective of the City	2
5 - Health and Welfare	3
6 - Holidays	3
7 - Wages	4
8 - Vacations	5
9 - Hours and Overtime	5
10 - Initiation of Meet and Confer Process	5
11 - Agreement Modification	5
12 - Grievance Procedure	5
13 - Premium Pay	6
14 - Work Schedules	6
15 - Administrative Provisions	7
16 - Savings Clause	7
17 - Duration of MOU	8
Agreement Modification	Appendix A
Grievance Procedure	Appendix B

3 1223 06648 1830

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter MOU) is entered into by the City and County of San Francisco (hereinafter City) through its designated representative acting on behalf of the Board of Supervisors and the Operating Engineers, Local 3 (hereinafter Union).

1. RECOGNITION

The City acknowledges that the Union has been certified by the Municipal Employee Relations Panel or the Civil Service Commission as the recognized employee representative, pursuant to the provisions as set forth in the City's Employee Relations Ordinance for the following classifications:

5310	Surveyor's Field Assistant
5312	Surveyor
5314	Survey Party Chief
6318	Construction Inspector
7328	Operating Engineer, Universal
9331	Piledriver Engine Operator
9334	Deckhand (Tugs and Dredges)
9335	Marine Fireman
9335.1	Dredge Lever Operator
9336	Head Dredge Lever Operator
9348	Truck Crane Oiler
7221	Asphalt Plant Supervisor I
7424	Dryer-Mixer Operator

2. INTENT

It is the intent of the parties signatory hereto that the provisions of this MOU shall not become binding until adopted or accepted by the Board of Supervisors by appropriate action. Moreover, it is the intent of the Board of Supervisors acting on behalf of the City to agree to wages, hours and other terms and conditions of employment as are within the Board's jurisdiction, powers, and authority to act as defined by the Charter, state law, California Constitution and other applicable bodies of the law.

2. INTENT (cont'd)

The Board does not intend nor attempt to bind any board, commission or officer to any provisions of this agreement over which the Board has no jurisdiction.

Provisions of this MOU which are in conflict with provisions of ordinances, resolutions, rules or regulations over which the Board has jurisdiction to act, shall prevail. Unless an ordinance, resolution, rule or regulation is specifically discussed and changed, deleted or modified by the terms of this MOU, it shall be deemed to remain in full operational effect.

3. NO STRIKE PROVISION

During the period of time this MOU is in effect, the Union and its members agree not to initiate, engage in, cause, instigate, encourage or condone a strike, work stoppage or slowdown which are detrimental to the conduct of City and County business and services. The City agrees during the term of this agreement not to conduct a lockout against any of the employees covered by this MOU.

4. OBJECTIVE OF THE CITY

It is agreed that the delivery of municipal services in the most efficient, effective and courteous manner is of paramount importance to the City and its employees. Such achievement is recognized to be a mutual obligation of the parties to this MOU within their respective roles and responsibilities.

The Union recognizes the City's right to establish and/or revise performance standards or norms notwithstanding the existence of prior performance levels, norms or standards. Such standards, developed by

Digitized by the Internet Archive
in 2015

https://archive.org/details/memorandumofunde1978inte

4. OBJECTIVE OF THE CITY (cont'd)

usual work measurement procedures may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or group of employees.

Employees who work at less than acceptable levels of performance may be subject to disciplinary measures in accordance with applicable Charter provisions and rules and regulations of the Civil Service Commission.

5. HEALTH AND WELFARE

Effective July 1, 1978 the City agrees to contribute $36.99 per month directly into the City Health Service System for each employee who is a member of the Health Service System.

6. HOLIDAYS

Except as otherwise provided in Section V (B), and except when normal operations require, or in an emergency, employees shall not be required to work on the following days hereby declared to be holidays for such employees:

January 1, February 12 (Lincoln's Birthday), the third Monday in February (Washington's Birthday), the last Monday in May, July 4, first Monday in September (Labor Day), September 9 (Admission Day), the second Monday in October (Columbus Day), November 11, Thanksgiving Day, December 25, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States, and an additional holiday to be taken on a day selected by the employee subject to approval of the Appointing Officer. Both full time and part time temporary employees must complete 6 months continuous service before

6. HOLIDAYS (cont'd)

receiving an additional day; provided that part time temporary employees who are not regularly scheduled, but are employed on an as needed, irregular intermittent or other irregular basis are ineligible for an additional day. Provided further, if January 1, February 12, July 4, September 9, November 11 or December 25 falls on a Sunday, the Monday following is a holiday.

In the event a legal holiday falls on Saturday, the preceding Friday shall be observed as a holiday: provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each department head shall make provision for the staffing of public offices under his jurisdiction on such preceding Friday so that said public offices may serve the public as provided in Section 7.702 of the Charter. Those employees who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be allowed a day off in lieu thereof as scheduled by the Appointing Officer in the current fiscal year.

The San Francisco Unified School District and San Francisco Community College District may, for its own employees and employees regularly assigned from other departments, substitute for the holidays declared above an equal number of different holidays.

7. WAGES

The City and the Union agree that the rates of compensation for classifications represented by the Union shall be the rates adopted by the Board of Supervisors and set forth in the annual Salary Standardization Ordinance for fiscal year 1978-79.

8. VACATIONS

Employees in City and County service shall be allowed a vacation with pay annually, as long as he or she continues in employment, as follows:

(1) After one years' continuous service, ten working days;
(2) After five years' continuous service, fifteen working days;
(3) After fifteen years' continuous service, twenty working days.

9. HOURS AND OVERTIME

A normal work day is a tour of duty of eight hours completed within not more than nine hours. A normal work week is a tour of duty on each of five consecutive days from Monday through Friday. Any work performed on Saturdays, Sundays, holidays or before the regular scheduled daily starting time or after eight (8) hours of work shall be paid for at the rate of time and one-half.

10. INITIATION OF MEET AND CONFER PROCESS

The Union agrees to submit to the City, on or before November 30, 1978, its request for changes in the Administrative Provisions of the Salary Standardization Ordinance and the Salary Ordinance.

11. AGREEMENT MODIFICATION

The parties to this agreement hereby agree to the provisions of Appendix A which is attached hereto and incorporated herein by reference. Appendix A relates to modification of the agreement in relation to the "Jarvis-Gann amendment".

12. GRIEVANCE PROCEDURE

The grievance procedure attached hereto as Appendix B is incorporated herein by reference and shall be utilized to resolve problems or questions of interpretation which may arise on issues within the definition contained in Section A of the grievance procedure.

13. PREMIUM PAY

Classification 7328 Operating Engineer, Universal assigned to the Sewer Department, Sewer Repair, Department of Public Works shall be entitled to a $3.00 per day premium when assigned work which requires prolonged routine daily contact with untreated sewage.

14. WORK SCHEDULES

The following language is an excerpt from Section II 3 (G) of the 1978-79 Salary Standardization Ordinance.

Employees shall receive no compensation when properly notified (2 hour notice) that work applicable to the classification is not available because of inclement weather conditions, shortage of supplies, traffic conditions, or other unusual circumstances. Employees who are not properly notified and report to work and are informed no work applicable to the classification is available shall be paid for a minimum of two hours.

It is the intent and understanding of the City and the Union that the above language shall in no way amend or alter the meaning, interpretation, or the administration of the 1978-79 Salary Standardization Ordinance. However, if a question arises as to the definition of "unusual circumstances" the following definition shall be applicable to those classifications in Section I Recognition which the Operating Engineers Local #3 is certified to represent.

For the purpose of this subsection "other unusual circumstances" shall mean employee strikes or work slowdowns or federal, state or locally declared emergencies, or physical conditions at the job site created by natural conditions or acts of God, which make work unavailable.

15. ADMINISTRATIVE PROVISIONS

All provisions of the Administrative Provisions of the Salary Standardization Ordinance for fiscal year 1978-79, except for provisions of this MOU which specifically and expressly are referred as an exception to such provisions, shall apply to all employees.

16. SAVINGS CLAUSE

Should any part hereof or any provision herein be declared invalid by reason of conflicting with a Charter provision or existing ordinances or resolutions which the Board of Supervisors had not agreed to alter, change or modify, or by any decree of a court, such invalidation of such part or portion of this MOU shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect for the duration of the MOU.

17. DURATION OF MOU

This MOU shall be in effect from July 1, 1978 through and inclusive of June 30, 1979.

IN WITNESS WHEREOF, the parties hereto have executed this MOU this 26th day of May, 1978.

FOR THE UNION

Harold Huston
President

Recording-Corresponding Secretary

Dale Mann
Business Manager

Hugh Bodaune
District Representative

FOR THE CITY AND COUNTY

Milton H. Mares
Milton H. Mares
Chief Labor Negotiator

Jean M. Pral
Jean M. Pral
Employee Relations Representative

APPROVED AS TO FORM:
GEORGE AGNOST, CITY ATTORNEY

By
James L. Lazarus
Deputy City Attorney

APPROVED AND ADOPTED BY THE
BOARD OF SUPERVISORS BY
RESOLUTION NO. _____
ON _____

AGREEMENT MODIFICATION

In the event the California Constitution is amended during the term of this agreement by the adoption of the so-called "Jarvis-Gann amendment", it is agreed by the parties signatory hereto that all provisions negotiated and governed by the terms of this agreement which resulted in any additional cost whatsoever to the City for the Fiscal Year 1978-79, shall automatically become inoperative. Except as provided in this paragraph, the Union does not waive any rights to meet and confer on other items within the scope of representation.

The City acknowledges its obligation to meet and confer on matters of wages, hours and terms and conditions of employment as defined in Government Code Section 3504 that might be affected by the adoption of the Jarvis-Gann amendment and will do so to the extent required by this agreement and applicable laws.

This grievance procedure applies to conditions of employment as set forth by Ordinance or Resolution of the Board of Supervisors, or ratified Memorandum of Understanding of the Board of Supervisors provided that such condition(s) is within the scope of representation as defined in California Government Code Section 3504 and provided further that such condition of employment is within the charter authority of the Board of Supervisors.

A. DEFINITION

A grievance is defined as and is limited to an allegation by an employee, a group of employees, or the Union that the City has failed to implement a condition of employment as specifically set forth in an existing Ordinance or Resolution of the Board of Supervisors, or a Memorandum of Understanding ratified by the Board of Supervisors; provided that such condition of employment is within the scope of representation as defined in California Government Code Section 3504 and provided further that such condition of employment is within the charter authority of the Board of Supervisors to so implement.

B. EXCLUSION OF CIVIL SERVICE MATTERS

The grievance procedure herein established shall have no application to matters within the jurisdiction of the Civil Service Commission as set forth in the City Charter or to any rules adopted by the Commission pursuant to its Charter authorities.

C. DEPARTMENTAL REVIEW AND ADJUSTMENT OF GRIEVANCES

Except as may be otherwise provided in a separate departmental memorandum of understanding, the following is the departmental procedure to be followed in the resolution of grievances as defined in paragraph "A" hereof.

D. GRIEVANCE PROCEDURE STEPS

An employee having a grievance shall first discuss it with the employee's immediate supervisor and try to work out a satisfactory solution in an informal manner with the supervisor.

STEP ONE

(a) If a solution, satisfactory to both the grievant and the immediate supervisor, is not accomplished by informal discussion, the grievant shall have the right to consult with, and be assisted by, a representative of the grievant's own choice in this and all succeeding steps of this grievance procedure.

(b) If the grievant desires to pursue the grievance further, the grievant, or the grievant's representative, shall, within seven (7) working days of the informal discussion with the immediate supervisor, submit a Letter of Grievance-Step One, to the immediate supervisor, the appointing authority, the Employee Relations Director, and the formally recognized employee organization, if any, for the grievant's classification.

(c) The Letter of Grievance - Step One, shall contain:

1. the date of the informal discussion,
2. the date of the submission of the Letter of Grievance - Step One, to the immediate supervisor,
3. the specific section(s)/subsection(s) of the Board of Supervisor's Ordinance, Resolution or ratified Memorandum of Understanding which grants the condition of employment that the grievant alleges the City has failed to implement,
4. a full and complete explanation of the circumstances of the grievance, and
5. the remedy sought by the grievant.

(d) The immediate supervisor shall, within seven (7) working days of the receipt of the grievant's Letter of Grievance - Step One, submit an Answer to Letter of Grievance - Step One, to the grievant, the appointing authority, and the Employee Relations Director.

(e) The Answer to Letter of Grievance - Step One, shall contain:

1. the date of receipt of the Letter of Grievance, - Step One,
2. the date of the submission of the Answer to Letter of Grievance - Step One, to the grievant,
3. a full and complete explanation of the circumstances of the grievance, and
4. the resolution of the grievance.

STEP TWO

(a) If the grievant desires to pursue the grievance further, the grievant, or the grievant's representative, shall, within seven (7) working days of receipt of the Answer to Letter of Grievance - Step One, submit a Letter of Grievance - Step Two, to an intermediate supervisor, designated by the appointing authority, the appointing authority and the Employee Relations Director.

(b) The Letter of Grievance - Step Two, shall contain:

1. the date of receipt, by the grievant, of the answer to Letter of Grievance - Step One,
2. date of submission of the Letter of Grievance - Step Two, to the intermediate supervisor,
3. the specific section(s)/subsection(s) of the Board of Supervisor's Ordinance, Resolution or ratified Memorandum of Understanding which grants the condition of employment that the grievant alleges the City has failed to implement,

4. a full and complete explanation of the circumstances of the grievance, and

5. the remedy sought by the grievant.

(c) The intermediate supervisor shall, within seven (7) working days of the receipt of the grievant's Letter of Grievance - Step Two, submit an Answer to Letter of Grievance - Step Two, to the grievant, the appointing authority, and the Employee Relations Director.

(d) The Answer to Letter of Grievance - Step Two, shall contain:

1. the date of receipt of the Letter of Grievance - Step Two,

2. the date of the submission of the Answer to Letter of Grievance - Step Two, to the grievant,

3. a full and complete explanation of the circumstances of the grievance, and

4. the resolution of the grievance.

TEP THREE

(a) If the grievant desires to pursue the grievance further, the grievant, or the grievant's representative, shall, within seven (7) working days of receipt of the Answer to Letter of Grievance - Step Two, submit a Letter of Grievance - Step Three, to the appointing authority and the Employee Relations Director.

(b) The Letter of Grievance - Step Three, shall contain:

1. the date of receipt, by the grievant, of the answer to Letter of Grievance - Step Two,

2. date of submission of the Letter of Grievance - Step Three, to the appointing authority,

3. the specific section(s)/subsection(s) of the Board of Supervisor's Ordinance, Resolution or ratified Memorandum of Understanding which grants the condition of employment that the grievant alleges the City has failed to implement,

4. a full and complete explanation of the circumstances of the grievance, and

5. the remedy sought by the grievant.

(c) The appointing authority shall, within seven (7) working days of the receipt of the grievant's Letter of Grievance - Step Three, submit an Answer to Letter of Grievance - Step Three, to the grievant and the Employee Relations Director.

(d) The Answer to Letter of Grievance - Step Three, shall contain:

1. the date of receipt of the Letter of Grievance - Step Three,

2. the date of the submission of the Answer to Letter of Grievance - Step Three, to the grievant,

3. a full and complete explanation of the circumstances of the grievance, and

4. the resolution of the grievance.

(e) Unless waived by written mutual agreement of the grievant and the appointing authority a hearing is required at this step.

(f) The seven (7) working day time limit noted in Step Three above may be extended by written mutual agreement between the grievant and the appointing authority.

STEP FOUR

(a) If the grievant desires to pursue the grievance further, the grievant, or the grievant's representative, shall, within thirty (30) calendar days of receipt of the answer to Letter of Grievance - Step Three, submit a written request to the Employee Relations Director that the grievance be heard and resolved by a hearing officer.

(b) Prior to the selection of the hearing officer, the Employee Relations Director shall informally review the grievance and attempt to resolve the grievance to the mutual satisfaction of the grievant and the appointing authority. The Employee Relations Director shall have ten (10) working days after receipt of the request in which to review and seek resolution of the grievance.

(c) The hearing officer shall be selected by mutual agreement between the grievant, or the grievant's representative, and the Employee Relations Director, If the grievant, or the grievant's representative, and the Employee Relations Director are unable to agree on the selection of a hearing officer they shall jointly request the State Conciliation Service to submit a list of five (5) hearing officers who have had considerable experience as a hearing officer in public employment disputes. The grievant, or the grievant's representative, and the Employee Relations Director, shall then alternately delete names from such list until only one (1) name remains; and that person shall serve as the hearing officer. Whether the employee, or his representative, or the Employee Relations Director deletes the first name in the alternating process of deleting names, shall be determined by lot.

(d) Except when a statement of facts mutually agreeable to the grievant and the appointing authority is submitted to the hearing officer, it shall be the duty of the

hearing officer to hear and consider facts submitted by the parties.

(e) It shall be the duty of the hearing officer to hold said hearing within fifteen (15) calendar days of written acceptance of appointment as the hearing officer.

(f) After said hearing, or review of mutually agreeable statement of facts, it shall be the duty of the hearing officer to make written finding of fact(s) upon which the decision of the hearing officer is based.

(g) The decision of the hearing officer shall be final and binding upon the parties.

(h) The hearing officers' authority pursuant to the provisions of this grievance procedure shall be limited to a decision, based on submitted facts and applicable law, of whether or not the City has improperly failed to implement a condition of employment which is provided for in an Ordinance, Resolution or Memorandum of Understanding ratified by the Board of Supervisors. Further, the hearing officer shall have no power to amend, or recommend an amendment of, a Board of Supervisors ratified Memorandum of Understanding, Ordinance or Resolution.

(i) Each party, (employee, group of employees, or Union and the appointing authority) to a hearing before a hearing officer shall bear its own expenses in connection therewith. All fees and expenses of the hearing officer, and a reporter if any, shall be borne and paid in full by the losing party.

In the event the hearing officer shall make a compromise decision, the party or parties which shall pay the fees and expenses of the hearing officer, and a reporter if any, shall be determined on a proportional basis by the hearing officer.

E. THE EFFECT OF FAILURE OF TIMELY ACTION

Failure of the grievant to submit an appeal within the required time limit at any step, or for informal discussion, shall constitute an abandonment of the grievance. Failure of the City to respond within the time limit in any step shall result in an automatic advance of the grievance to the next step.

F. TIMELINESS OF GRIEVANCE

A grievance shall be void unless initiated by informal discussion with the immediate supervisor within forty five (45) calendar days from the date on which the City has allegedly failed to implement a condition of employment, or within forty five (45) calendar days from the time the grievant might reasonably have been expected to have learned of such alleged failure to implement a condition of employment. In no event shall any grievance include a claim for money relief for more than the forty five (45) day period plus such reasonable discovery period.

G. RIGHTS OF THE UNION FORMALLY RECOGNIZED TO REPRESENT THE GRIEVANT'S CLASSIFICATIONS

An employee, in a classification which is included within a representation unit for which formal recognition has been granted, shall pursue any grievance under this procedure with the assistance of said formally recognized employee organization or said employee may represent himself/herself with the assistance, if the employee so elects, of counsel or

such representative. As used herein, counsel or other representative shall not include any other employee organization or the representative(s) of any other employee organization.

In those grievances in which the employee represents himself/herself, or arranges for representation by other than the formally recognized employee organization as set forth above, the City shall make no resolution or award which shall be inconsistent with the terms and conditions of a ratified Memorandum of Understanding which covers the grievant's classification. In the event the formally recognized employee organization determines that such an inconsistent resolution or award has been made, the formally recognized employee organization, on its own behalf, may file a grievance at Step Three for the purpose of amending such inconsistent resolution or award. In the event the grievant represents himself/herself, or elects a representative other than the formally recognized employee organization, the formally recognized employee organization may elect to be a full and equal party at Step Four for the purpose of protecting the interest of its members in negotiated conditions of employment.

APPROVED AS TO FORM:
THOMAS M. O'CONNOR
CITY ATTORNEY
BY _____
DEPUTY CITY ATTORNEY